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No. 88-483

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

JACK A. NORTHROP,
Petitioner,

v.

LEASE FINANCING CORPORATION,
FRANK P. SLATTERY, JR., and
RICHARD E. CARUSO,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Do the federal interests in uniformity, certainty and preservation of scarce judicial resources require application of a single statute of limitations for all causes of action under section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder?

2. Does the interstate nature of causes of action under section 10(b) and Rule 10b-5 and the substantive purposes of the federal securities laws require the application of a federal statute of limitations?

3. Should the Court's ruling on the foregoing issues be applied to the litigants in this case?

STATEMENT OF CORPORATE RELATIONSHIPS

Respondent Lease Financing Corporation is owned by LFC No. 40 Corp., which is owned by LFC Financial Corp., which is owned by Cawsl Enterprises, which is owned by Cawsl Corp. Lease Financing Corporation is affiliated with LFC Management Corporation, Ashvale Leasing Corporation, Axminster Leasing Corporation, Chesham Leasing Corporation, Hansell Leasing Corporation, Highgate Leasing Corporation, Kingman Leasing Corporation, LFC Management Corporation, LFC No. 4 Corp., LFC No. 7 Corp., LFC No. 8 Corp., LFC No. 9 Corp., LFC No. 10 Corp., LFC No. 12 Corp., LFC No. 13 Corp., LFC No. 14 Corp., LFC No. 15 Corp., LFC No. 17 Corp., LFC No. 20 Corp., LFC No. 21 Corp., LFC No. 22 Corp., LFC No. 24 Corp., LFC No. 27 Corp., LFC No. 28 Corp., LFC No. 30 Corp., Oxshott Leasing Corporation, Parkview Leasing Corporation, Regents Leasing Corporation, Southwark Leasing Corporation, and Weymouth Leasing Corporation.

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Respondents Lease Financing Corporation, Frank P. Slattery, Jr., and Richard E. Caruso ("respondents") respectfully request that the Court deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit submitted by petitioner Jack A. Northrop ("Northrop").

STATEMENT OF JURISDICTION

The judgment of the court of appeals was filed June 24, 1988, and this Court has jurisdiction to review that judgment by writ of certiorari pursuant to 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Northrop filed suit against respondents alleging violation of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78, *et seq.*, specifically §10(b) and Rule 10b-5 promulgated thereunder, which provided the basis for federal jurisdiction in the district court.

Northrop did not commence this action until more than one year after he acknowledged discovery of the alleged fraud. Thus, this action is time barred under the one year limitation set forth in the federal securities laws and would be time barred under the Pennsylvania Securities Act.[1] The action would be timely only applying Pennsylvania's two year limitation for common law fraud.[2]

Respondents moved to dismiss, urging that Northrop's federal securities claim was barred by the one year statute of limitations. The district court, applying a claim by claim approach to borrowing a limitations period, held that the two year limitations period for common law fraud was applicable. However, the court questioned the continued validity of this approach and certified the following question for interlocutory appeal to the United States Court of Appeals for the Third Circuit:

> What is the appropriate period of limitations in Pennsylvania for claims under Sec. 10(b) of the Securities and Exchange Act of 1934 in light of the United States Supreme Court's decision in Wilson v. Garcia, 471 U.S. 261 (1985) and its progeny in the Third Circuit.

The Third Circuit then granted leave to appeal. However, while this appeal was pending, the Third Circuit *en banc* unanimously held in a similar case that the appropriate limita-

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[1] *See* Pennsylvania Securities Act of 1972, 70 Pa. Cons. Stat. Ann. §1-504(a) (Purdon Supp. 1986). Section 504(a) provides that "[n]o action shall be maintained to enforce any liability created under [the Act] one year after the plaintiff receives actual notice or upon the exercise of reasonable diligence should have known of the facts constituting the violation."

[2] *See* 42 Pa. Cons. Stat. Ann. §5524(7) (Purdon Supp. 1987).

tions period for a Rule 10b-5 cause of action was the one year period found in the federal securities law. *In re Data Access Systems Securities Litigation,* 843 F.2d 1537 (3d Cir. 1988).[3] Thereafter, the Third Circuit held that *Data Access* controlled this case and remanded for a determination of the prospectivity of the *Data Access* ruling. *Northrop v. Lease Financing Corporation,* No. 88-1038 (June 24, 1988 3d Cir.)

SUMMARY OF ARGUMENT

The federal interests in uniformity, certainty and preservation of scarce judicial resources require a single statute of limitations for all causes of action under section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. The single most appropriate limitations period is that found in the federal securities laws.

> Deciding which features of state periods of limitation to adopt for which federal statutes wastes untold hours. (citation omitted). Never has the process been more enervating than in securities law. There are many potentially analogous state statutes, with variations for different kinds of securities offenses and different circumstances that might toll the period of limitations. Both the bar and scholars have found the subject vexing and have pleaded, with a unanimity rare in the law, for help.
>
> . . . As practitioners and scholars agree that the result is a mess, they also believe that the courts missed a turn. Courts should have drawn the periods of limitations for the implied rights from the period of limitations for the express rights. [one year after discovery-three years after the occurrence]. . . . This is what the courts should have used.

Norris v. Wirtz, 818 F.2d 1329, 1332 (7th Cir.) (Easterbrook, J.), *cert. denied,* ___ U.S. ___, 108 S.Ct. 329 (1987). The

[3] On October 3, 1988, this Court denied certiorari in *Data Access,* No. 88-54.

Third Circuit took the correct turn in *Data Access,* by scrupulously following the guideposts established by this Court in *Wilson v. Garcia,* 471 U.S. 261 (1985) and *Agency Holding Corp. v. Malley-Duff & Associates, Inc.,* ___ U.S. ___, 107 S.Ct. 2759 (1987) for borrowing limitations periods.

REASONS FOR DENYING THE PETITION

I. IN DETERMINING THAT THE ONE YEAR-THREE YEAR LIMITATIONS PERIOD IN THE FEDERAL SECURITIES LAW SHOULD GOVERN ALL 10b-5 CLAIMS, THE THIRD CIRCUIT CORRECTLY APPLIED THE BORROWING APPROACH ARTICULATED BY THIS COURT.

A. In *Wilson* and *Agency Holding,* this Court set forth firmly defined and easily applied guidelines for borrowing statutes of limitations.

In *Wilson v. Garcia,* 471 U.S. 261 (1985), this Court acknowledged that "[f]ew areas of the law stand in greater need of firmly defined, easily applied rules than does the subject of periods of limitations" and that there was "conflict, confusion, and uncertainty concerning the appropriate statute of limitations to apply." 471 U.S. at 266.

In order to provide guidance to the lower courts, the Court articulated three questions which must be answered to determine "the most appropriate" or "most analogous" state statute to apply to the plaintiff's claim. 471 U.S. at 268. The first question is whether state law or federal law governs the characterization of the claim for statute of limitations purposes. The second question is whether, if federal law applies, all claims should be characterized in the same way, or whether they should be evaluated differently depending upon the varying factual circumstances and legal theories presented in each individual case. The third inquiry focuses on the essence

of the claim in the pending case, and which state statute provides the most appropriate limiting principle.[4] 471 U.S. at 268.

Thereafter, in *Agency Holding Corp. v. Malley-Duff & Associates,* ___ U.S. ___, 107 S.Ct. 2759 (1987), this Court reiterated the *Wilson* approach to borrowing, but modified the final inquiry. Courts are now to determine whether a federal or a state statute of limitations should be chosen. Thus, in *Agency Holding,* this Court concluded that the practicalities of litigation under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964 ("RICO"), presented compelling reasons for federal preemption of otherwise available state statutes of limitations and held that the limitations period for all RICO actions is the four year period in the Clayton Act. 15 U.S.C. § 15b. *See* 107 S.Ct. at 2765-66.

Accordingly, the principles derived from *Wilson* and *Agency Holding* are that when the federal cause of action will arise primarily in a single state, then the federal interest in uniformity and certainty will require the application of the single most analogous state cause of action that will best serve the policies of the federal statute, *see Wilson,* 471 U.S. at 275, but when the federal cause of action is likely to arise in a multistate context, then the federal interests in uniformity and certainty will require federal preemption and the application of the most analogous federal statute of limitations, assuming that one exists. *See Agency Holding,* 107 S.Ct. at 2766.

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[4] In *Wilson,* this Court also recognized two key propositions. First is the proposition that it is sometimes more appropriate to choose a federal statute of limitations rather than a state statute of limitations, citing *Del Costello v. Teamsters,* 462 U.S. 151 (1983), and second is the proposition that "the cases also establish that the silence of Congress is not to be read as automatically putting an imprimatur on state law," citing Justice White's dissent in *Auto Workers v. Hoosier Cardinal Corp.,* 383 U.S. 696, 709 (1966). 471 U.S. at 268, n. 20.

B. Application of *Wilson* and *Agency Holding* to claims under section 10(b) of the Exchange Act and Rule 10b-5 requires selection of the limitation found in the federal securities laws.

This Court has not had occasion to determine the appropriate statute of limitations to apply in a Section 10(b) cause of action since *Wilson.*[5] The principles of *Wilson* and *Agency Holding,* however, give clear direction.

1. The characterization of a 10b-5 claim is a matter of federal law.

The characterization of a federal claim for purposes of selecting the appropriate statute of limitations is generally a question of federal law. *Agency Holding,* 107 S.Ct. at 2762. Characterization of a Rule 10b-5 cause of action is derived from the elements of the cause of action, and Congress' purpose in providing it. *See Wilson,* 471 U.S. at 268. The comprehensive scheme of statutes and regulations designed to police the securities industry is indicative of a strong federal interest. *Friedlander v. Troutman, Sanders, Lockerman & Ashmore,* 788 F.2d 1500, 1504 (11th Cir. 1986). Indeed, when Congress provided in the Exchange Act for exclusive jurisdiction in the federal courts, it surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action. *Cf. Wilson,* 471 U.S. at 269.

2. Federal interests in uniformity and certainty require selection of a single limitations period.

For many of the same reasons articulated by this Court in *Wilson* and *Agency Holding,* the federal interests in uniformity, certainty and avoidance of wasteful litigation require the selection of a single statute of limitations for all Rule 10b-5 causes of action. *Friedlander,* 788 F.2d at 1505. In *Agency Holding,* this Court, in determining whether a single statute of limitations should apply to all civil RICO claims, embraced the findings of

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[5] This Court has never ruled on the applicable limitations period for a section 10(b) and Rule 10b-5 action. *See Data Access,* 843 F.2d at 1539, *citing Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 210 n.29 (1976).

the American Bar Association Task Force, Report of the Ad Hoc Civil RICO Task Force, which described the borrowing process as "confused, inconsistent, and unpredictable." 107 S.Ct. at 2763.

Similarly, the Third Circuit, concluding that a single limitations period was needed for all 10b-5 claims, referred to the American Bar Association Report on borrowing a limitations period in the securities area. *Data Access,* 843 F.2d at 1544. *See* Committee on Federal Regulation of Securities, *Report of the Task Force on Statute of Limitations for Implied Actions,* 41 Bus. Law. 645, 646 (1986) (hereafter "Securities Task Force"). The Securities Task Force noted that the use of state limitations periods had resulted in myriad inconsistent federal court decisions ranging from one year in Maryland to ten years in Tennessee. Securities Task Force at 646. Not only can limitations periods vary from state to state but when the claim by claim approach is utilized different limitations periods can be applied within the same state and in the same case. Important to the Court's decision in *Wilson* was the conclusion that Congress would not have sanctioned the application of multiple limitations periods to the same claim in a single case.[6] 471 U.S. at 274-275.

3. The limitations period from the federal securities laws is the most appropriate.

In *Del Costello* and *Agency Holding,* this Court held that when a rule from elsewhere in federal law clearly provides a closer analogy than available state statutes, and when federal policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking, the federal limitations period should be chosen. *See Del Costello,* 462 U.S. at 171-72; *Agency Holding,* ___ U.S. at ___, 107 S. Ct. at 2767. *See also Data Access,* 843 F.2d at 1542, 1545, 1548.

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[6] In the context of labor disputes, this Court has rejected adoption of state statutes of limitations where the result would be a different limitations period applying to the union and the company in the same suit. *See Del Costello,* 462 U.S. at 169 n. 19.

The federal policies at stake in 10(b) and rule 10b-5 actions and the practicalities of litigation make the federal rule a significantly more appropriate vehicle for interstitial lawmaking.

a. Federal law is more analogous.

"As the current chaotic state of law demonstrates, no state law is readily applicable to the federal rights sought to be enforced." Securities Task Force at 656. The federal scheme of limitations expressly set forth in the Exchange Act "clearly provides a closer analogy than available state statutes." *cf. Del Costello,* 462 U.S. at 172. There is no indication that Congress even contemplated a private civil remedy for violations of section 10(b) when the Exchange Act was adopted in 1934, *see Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 196 (1976); therefore any assumption that Congress' failure to provide a limitations period for a private cause of action indicated a desire that limitations periods be chosen from state law is implausible. Securities Task Force at 655. *See also, Data Access,* 843 F.2d at 1547.

Further, where Congress expressly provided for civil liability, the question of limitation of the action was the subject of deep and perhaps "exaggerated" congressional interest. S. Schulman, *Statute of Limitations in 10b-5 Actions: Complication Added To Confusion,* 13 Wayne L. Rev. 635, 637 (1967). Sections 11(a), 12(1) and 12(2) of the Securities Act of 1933, 15 U.S.C. §77 *et seq.,* are governed by a period of one year from discovery of the wrong, with a maximum limitation of three years from the time of the wrong. Substantially identical limitation periods govern sections 9(e), 18(a) and 29(b) of the Exchange Act. This temporal consistency exists despite the diversity among these sections as to concepts of liability, which range from strict liability to negligence, to actions requiring proof of intentional wrong. The behavior prohibited by these sections also varies significantly, and actions by both buyers and sellers are included. S. Schulman at 637. *See also Data Access,* 843 F.2d at 1545-49. "In point of fact, the congressional policy on limitations . . . is so clear that every major commentator who has considered the question has

concluded that the one year and three year statute should be adopted for actions under section 10(b) and rule 10b-5." R. Martin, Jr., *Statute of Limitation in 10b-5 Actions: Which State Statute is Applicable?,* 29 Bus. Law 443, 455 n.91 (1974).

In *Agency Holding,* this Court found the similarity of purpose between RICO and the Clayton Act important. 107 S.Ct. at 2764. In the securities area there is an identity of purpose. Unlike the situation in *Agency Holding,* where the Court had to sift through the legislative history to conclude that Congress had not rejected the use of a federal statute of limitations, *see* 107 S.Ct. at 2766, Congress specifically provided statutes of limitations in the securities area. Indeed, Congress was deeply concerned about the limitations question and drafted the provisions with great care. S. Schulman at 637. *See also* Judge Easterbrook's concurrence in *Cange v. Stotler and Co., Inc.,* 826 F.2d 581 (7th Cir. 1987), where citing *Agency Holding* and *Del Costello,* he suggests that resort to a state law limitations period might not be appropriate where Congress has provided limitations periods in the securities and commodities law. Id. at 599 n.2.

b. The practicalities of securities litigation require federal preemption of otherwise available state statutes of limitations.

"In the context of federal securities regulation . . . the use of state law has disserved not only the federal courts but litigants, the bar, and the investment community." Securities Task Force at 656. Critical to this Court's conclusion in *Agency Holding* that the practicalities of RICO litigation required federal preemption of otherwise available state statutes of limitations, *see* 107 S.Ct. at 2765-66, was the interstate basis of many RICO claims. Like RICO cases, securities cases commonly involve interstate transactions, and conceivably the statute of limitations in all the states could govern claims under section 10(b) and Rule 10b-5.

The Third Circuit, as directed by this Court in *Agency Holding,* considered the multistate nature of securities claims and their impact on interstate commerce. The court noted:

> [The provisions of the 1933 and 1934 securities laws] all aim to compensate the same type of injury. All are designed to fill the void in the common law and to create remedies that would be uniform throughout our nation's commercial universe, instead of being subjected to the vagaries of independent and diverse state statutory regulations.
>
> Authorized by the interstate commerce clause and responding to the need for national uniformity (an absolute component of our national economy), the remedies under the Securities Acts are made uniform by federal law in all 50 states. What Justice Story stated with great eloquence, in another era in another context, seems especially appropriate here:
>
> The law respecting [securities] may be truly declared in the language of Cicero, adopted by Lord Mansfield in *Luke v. Lyde,* 2 Burr. 883, 887, to be in great measure, not the law of a single country only, but of the commercial world. Non erit alia lex Romae, alia Athenis; alia nunc, alia posthac; sed et apud omnes gentes, et omni tempore una eademque lex optinebit. *Swift v. Tyson,* 16 Pet. 1, 10 L.Ed. 865, 871 (U.S. 1842). The necessity for uniform federal remedies in security cases would seem to demand recourse to a uniform federal statute of limitations.

Data Access, 843 F.2d at 1548-49.

Professor Loss also has pointed out that because of the multistate nature of securities claims, referral to state law makes for a great amount of utterly wasteful litigation.

> Since there are fifty-two jurisdictions and at least two statutes of limitations to choose from in each jurisdiction (for example, one for action based on fraud, another in the blue sky law, and often a third residual statute) and five or six commonly implied actions under the SEC statutes .... there are at least 500-odd possible answers (52x2x5).

Fundamentals of Securities Regulation (1983) at 1168. *See also Data Access,* 843 F.2d at 1550 *citing* similar language from Loss' *Fundamentals of Securities Regulations.* Federal courts, by applying state statutes of limitations, create needless inconsistency and unpredictability in securities fraud actions. This problem is compounded by applying the federal equitable tolling doctrine. Securities Task Force at 654.

In *Agency Holding,* the Court, citing an ABA Task Force Report on RICO, pointed out the dangers which multiple statutes of limitations present, such as forum shopping and needlessly complex litigation. 107 S.Ct. at 2766. These same dangers are present in securities litigation. The Securities Task Force Report states:

> This uncertainty and lack of uniformity promote forum shopping by plaintiffs and result in wholly unjustified disparities in the rights of parties litigating identical claims in different states.
>
> Neither plaintiffs nor defendants can determine their rights with any certainty. Vast amounts of judicial time and attorney fees are wasted.

Id. at 647. *See also Friedlander,* 788 F.2d at 1504-05; D. Block and N. Barton, *Securities Litigation,* 7 Sec. Reg. L.J. 374, 378 (1980).

The long limitations periods often borrowed from state statutes also frustrate the purposes of the federal securities laws. The legislative history in 1934 makes it pellucid that Congress included statutes of repose because of fear that lingering liabilities would disrupt normal business and facilitate false claims. It was understood that the three-year rule was to be absolute. *Data Access,* 843 F.2d at 1546 *citing Norris,* 818 F.2d at 1332. *See also* Securities Task Force at 655.

As this Court noted in *Del Costello,*

> These objections to the resort to state law might have to be tolerated if state law were the only source reasonably available for borrowing, as it often is. In this case, however, we have available a federal statute of limitations actually designed to accom-

> modate a balance of interests very similar to that at stake here—a statute that is, in fact, an analogy to the present lawsuit more apt than any of the suggested state-law parallels.

462 U.S. at 151.

Congress passed the securities law during a period of national crisis, which was caused in part by the inability of the states to preserve some order and stability in the stock market. *See* T. Hazen, *The Law of Securities Regulation* at 6-7 (1985). The current uncertainty and inconsistency serves no public purpose and it frustrates the purposes of the securities laws. Management of publicly held companies, as well as their auditors and attorneys, are frequently unable to assess the impact of possible litigation under Rule 10b-5. This deprives investors of information adequate for informed evaluation of such companies' potential liabilities. Securities Task Force at 647.

A number of courts have long recognized the logic of adopting the limitations period provided in the federal securities laws, but have refrained from doing so. For example, in *McNeal v. Paine, Webber, Jackson & Curtis, Inc.*, 598 F.2d 888 (5th Cir. 1979), the court noted that it felt compelled to choose the most analogous state statute of limitations despite the illogic of doing so. The court stated:

> By dint of repeated application in every circuit, with the evident approval of the Supreme Court and without legislative reaction by Congress, that basic rule is at this point definitely established. We are therefore compelled to apply it rather than follow the logically appealing course of applying the period of limitations applicable to a similar cause of action expressly provided in the federal securities laws. Although the latter approach would lead to desirable uniformity in securities litigation from state to state and would eliminate the need to engage in difficult and essentially esoteric comparisons of federal and state remedies, reform must await congressional action.

Id. at 892.

Those signals changed in *Del Costello, Wilson* and *Agency Holding.* The Third Circuit rigorously applied the borrowing test formulated by this Court in *Wilson* and *Agency Holding,* and adopted the most appropriate or most analogous borrowing period for 10b-5 causes of action—the limitations period in the federal securities laws. *Data Access,* 843 F.2d at 1542-50.

II. THE THIRD CIRCUIT'S REFUSAL TO RULE ON THE PROSPECTIVITY ISSUE DOES NOT CONFLICT WITH DECISIONS OF THIS COURT OR OTHER CIRCUITS.

The Third Circuit's refusal to address the question of application prospectively only of the limitation period selected in *Data Access* does not conflict with relevant precedent. No rule of law or judicial custom requires resolution of the issue of prospectivity by the court of appeals. The scope of appellate review arising from a Section 1292(b) certified question is within the discretion of the court. *See Miller v. Bolger,* 802 F.2d 660, 666-67 (3d Cir. 1986).

While it may be "commonplace for courts formulating a new or different rule of law to rule on its retroactivity at the same time," *Data Access,* 843 F.2d at 1552 (Seitz, J., dissenting), it has not been required. Nor, in the instant case, was it necessary for the Third Circuit to rule explicitly on the issue of prospectivity to answer the question certified. The district court requested direction only as to the most "appropriate period of limitations" for section 10(b) actions.

Moreover, it is well established that a controversy is to be decided on the law as it exists at the time the appellate court considers the case, although the law may differ from the one in force at the time the trial court decided the matter or at the time the events sparking the litigation occurred. *Hill v. Equitable Trust Co.,* 851 F.2d 691, 695 (3d Cir. 1988), *citing Gulf Offshore Co. v. Mobil Oil Corp.,* 453 U.S. 473, 486 n.16 (1981). There is a presumption of retroactive application of current rulings. *Hill,* 851 F.2d at 697. Thus, in declining to rule on the issue of prospectivity and remanding the instant case to the trial

court, the Third Circuit merely left undisturbed the presumption of retroactive application of the rule set forth in *Data Access.*

Even if it would have been expedient for the Third Circuit to rule on the applicability of the federal one year-three year limitations period to the instant case, such guidance has proved to be largely unnecessary. The test for non-retroactive application of a new rule of law is set forth in *Chevron Oil Co. v. Huson,* 404 U.S. 97 (1971). *See, e.g., Goodman v. Lukens Steel,* ___ U.S. ___, 107 S.Ct. 2617 (1987); *Saint Francis College v. Al-Khazraji,* ___ U.S. ___, 107 S.Ct. 2022 (1987). Using the *Chevron* criteria, the Third Circuit has held that the federal limitations period determined as most appropriate in *Data Access* should be applied retroactively. *Hill v. Equitable Trust Co.,* 851 F.2d 691 (3d Cir. 1988).

Before and after the *Hill* decision, district courts within the Third Circuit also have ruled almost uniformly that the *Data Access* holding should be applied retroactively. *See Cohen v. McAllister,* 688 F. Supp. 1040 (W.D. Pa. 1988); *Prospect Purchasing Co. v. Weber, Lipshie & Co.,* ___ F. Supp. ___, No. 85-4279 (D.N.J. August 3, 1988); *McCarter v. Mitcham,* ___ F. Supp. ___, No. 87-34 (W.D. Pa. August 31, 1988); *Ginsberg v. Blay-Miezah,* No. 87-7778 (E.D. Pa. September 1, 1988); *Bradford-White Corp. v. Ernst & Whinney,* No. 83-3371 (E.D. Pa. September 12, 1988); *Adelaar v. Lauxmont Farms, Inc.,* ___ F. Supp., ___, No. 87-0062 (M.D. Pa. September 16, 1988). *But see I.T.G. Inc. v. Price Waterhouse,* No. 86-6331 (E.D. Pa. September 7, 1988) (Ditter, J.); *Gruber v. Price Waterhouse,* No. 86-3976 (E.D. Pa. August 26, 1988) (Ditter, J.) (contrary to the Third Circuit's evaluation in *Hill* that there has not been clear precedent for the appropriate section 10(b) statute of limitations, both *ITG* and *Gruber* turn on the district court's determination that the plaintiffs in those cases relied on clear precedent).

As reflected by the cases decided since *Data Access,* the lower courts have exhibited little difficulty in determining the appropriateness of retroactive application of the federal one year-three year limitations period. Moreover, the Third Circuit's decision in *Hill* has provided additional direction in

affirming the retroactivity of the *Data Access* ruling under a *Chevron* analysis. Since no further guidance is necessary, this Court need not expend valuable judicial resources in consideration of the issue.

CONCLUSION

For the reasons stated above, respondents respectfully request that the Court deny the petition for a writ of certiorari to United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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